

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

September 9, 2002

IN RE:

TALK.COM, INC.

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DOCKET NO.
01-00216

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Pat Miller, of the Tennessee Regulatory Authority (“Authority” or “TRA”), the voting panel assigned to this docket,¹ at a regularly scheduled Authority Conference held on July 23, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the “CSD”) and Talk.com Holding Corp. a/k/a/ Talk.com, Inc. (“Talk.com” or the “Company”), a Pennsylvania corporation which has changed its corporate name to TalkAmerica Inc., relating to alleged violations of Tenn. Code Ann. § 65-4-125(a) and (b) and Tenn. Code Ann. § 65-4-104 *et seq.* and their concomitant regulations.² The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann § 65-4-125(a), Tennessee’s “slamming” law, prohibits a telephone service provider and persons acting on its behalf from designating or changing a subscriber’s telecommunications services provider if those designating or changing the service “know[] or reasonably should know that such provider or person does not have the authorization of such

¹ The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Pat Miller was randomly selected and assigned to Docket No. 01-00216.

² See Tenn. Comp. R. & Reg. 1220-4-2-.56, 1220-4-2-.58 and 1220-4-11.07.

subscriber.” Tenn. Comp. R. & Regs. 1220-4-2-.56 delineates the authorized procedures necessary to lawfully switch telephone service providers.

Tenn. Code Ann § 65-4-125(b), Tennessee’s “cramming” law, prohibits telephone service providers and persons acting on their behalf from billing and collecting from any subscriber to telecommunications services “any charges for services to which the provider or person acting on behalf of the provider know[] or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services.” Tenn. Comp. R. & Regs. 1220-4-2-.58 sets forth the billing requirements for charges on consumers’ bills.

Tenn. Code Ann. § 65-4-125(f) authorizes the TRA to impose a civil penalty of “not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000)” for each day of violation upon telecommunications service providers that have violated the slamming and cramming provisions of Tenn. Code Ann. § 65-4-125.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program.

Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.³ “Such proceedings may include without limitation proceedings to issue a

³ See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”⁴

The CSD commenced its investigation of Talk.com on March 1, 2000, after receiving a complaint regarding a billing dispute with Talk.com. The CSD sent Talk.com a Notice of the Violation on March 1, 2000.

As the CSD’s investigation proceeded, additional consumer complaints alleging violations of the slamming, cramming and Do-Not-Call statutes were filed against Talk.com or its affiliated companies.⁵ In each instance, the CSD notified Talk.com of the complaint and requested a response. The CSD met with representatives of Talk.com on several occasions to discuss collectively the consumer complaints on file at the TRA. During this time period, the CSD investigated over one hundred (100) consumer complaints against Talk.com.

On March 6, 2001, the Directors voted unanimously to open Docket No. 01-00216 “for the purpose of further investigation and the initiation of show cause proceedings against Talk.com, Inc. for failure to comply with Tenn. Code Ann. §§ 65-4-125, 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-2-.56 and 1220-4-11-.07.” After additional investigation, on October 12, 2001, the TRA issued the *Order Expanding Show Cause Proceeding to Include the Investigation of “Cramming” Complaints Pursuant to Tenn. Code Ann. § 65-4-125(b) Against Talk.com*. On November 8, 2001, the TRA issued the *Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed* (hereinafter

⁴ Tenn. Code Ann. § 65-4-405(f).

⁵ Talk.com is affiliated with or also known as Access One, Access One Communications (“Access One”), Omnicall, The Phone Company, The Other Phone Company, AOL Long Distance, Talk America and Tel-save. The TRA approved a Settlement Agreement between the CSD and Access One resulting from the CSD’s investigation into complaints against Access One. An order approving the Settlement Agreement was entered on September 18, 2000 in TRA Docket No. 00-00687. Talk.com subsequently purchased Access One.

"*Show Cause Order*"), which included one hundred and seven (107) complaints from Tennessee consumers. The proposed Settlement Agreement was negotiated as the result of the CSD's investigation into the complaints against Talk.com. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Talk.com's headquarters are located in Reston, Virginia, with offices in New Hope, Pennsylvania, Palm Harbor, Florida, Ft. Meyers, Florida, Orlando, Florida, and Greenville, South Carolina. It employs approximately eleven hundred persons, with no more than one (1) person working within the State of Tennessee.

Among the factors the CSD considered in reaching this Agreement was Talk.com's current financial status. Financial filings issued by Talk.com indicate that its parent company has incurred losses in 2000 and 2001 and has an accumulated deficit of over four hundred million dollars (\$400,000,000). Further, Talk.com registered with the TRA as a telephone solicitor on October 6, 2000. Since the *Show Cause Order* was issued, no complaints alleging that Talk.com violated Tenn. Code Ann. § 65-4-401, *et seq.* have been received.

After its meetings with the CSD, Talk.com made significant efforts to come into compliance with Tennessee law and provide appropriate relief to complainants. Talk.com voluntarily provided the CSD with copies of its solicitation and verification scripts and ceased the use of scripts the CSD deemed non-compliant with Tennessee law and regulations. Talk.com paid at least ninety-one thousand seven hundred and thirty-seven dollars (\$91,737.00) in

monetary adjustments and restitution to Tennessee consumers who filed complaints with the TRA, some of whose complaints are included in the *Show Cause Order*. Talk.com has resolved the one hundred and seven (107) complaints included in the *Show Cause Order*. Talk.com paid a total of twelve thousand five hundred and seventy-two dollars (\$12,572) in monetary adjustments and restitution to the sixty-one (61) complainants in the *Show Cause Order* who alleged slamming and cramming violations. As a part of the Settlement Agreement, Talk.com agreed to implement measures, as outlined in Exhibit A, to prevent similar occurrences in the future.

A company representative participated in the Authority Conference on July 23, 2002. Following a review of the Settlement Agreement and the record in this case, the panel voted unanimously to approve the Settlement Agreement.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. Talk.com shall cease the use of promotional checks in its solicitation of Tennessee subscribers for the twelve (12) month period following the approval of the Settlement Agreement.

3. For a period of twenty-four (24) months following the date of approval of the Settlement Agreement, Talk.com shall submit to the CSD a monthly report setting forth a written summary of all oral and written complaints received by Talk.com's Regulatory, ILEC Complaint and Executive Departments (including, without limitation, complaints received via email, facsimile and telephone) from Tennessee customers alleging billing irregularities or that their telecommunication service provider was switched without authorization. Each written summary shall include the following to the full extent available:

- (a) the name and telephone number of the customer;

- (b) the nature of the complaint;
- (c) the date the complaint arose;
- (d) the name of the sales representative or other Talk.com employee responsible for or involved in the generation of the complaint;
- (e) a description of the action taken by Talk.com to resolve the complaint;
- (f) a description of the action taken by Talk.com with respect to the sales representative or Talk.com employee involved in the complaint (including, where applicable, copies of reprimands and termination letters); and
- (g) a summary of the refunds, if any, provided to the customer.

Talk.com shall attach to each report copies of all written complaints raising slamming or cramming issues received by Talk.com from Tennessee customers and all slamming and cramming complaints of Tennessee customers received by Talk.com from any regulatory body (such as the Better Business Bureau, Federal Communications Commission, Tennessee Regulatory Authority, or other governmental regulatory body).

4. For a period of twenty-four (24) months from the date of approval of this Settlement Agreement, Talk.com shall arrange, at its own expense, for two (2) representatives of the CSD to visit the Talk.com office where its telemarketing activities are being conducted for a semi-annual regulatory audit of Talk.com's processes from the date of the approval of the Settlement Agreement (the "Regulatory Audit"). Such Regulatory Audits shall be conducted no more than twice during any calendar year over a period not to exceed three (3) consecutive days unless as a result of such Regulatory Audit the CSD determines that Talk.com has demonstrated

noncompliance with Tenn. Code Ann. § 65-4-125, Tenn. Code Ann. § 65-4-401, *et seq.* or their concomitant regulations. In the case of such failure, the CSD shall notify Talk.com in writing within forty-eight (48) hours of an additional Regulatory Audit and an additional Regulatory Audit shall be scheduled at the parties' mutual convenience within the following ninety (90) days. During the Regulatory Audit and additional Regulatory Audit, if any, the CSD representatives may, at their discretion, interview Talk.com customer service and regulatory representatives, review training and disciplinary measures, and such other matters as may be necessary to monitor Talk.com's solicitation and billing activities in Tennessee. The CSD shall use its best efforts to conduct its Regulatory Audit in a manner that is not disruptive to Talk.com's operations. The CSD shall book all travel through Talk.com's preferred travel agency and adhere to Talk.com's internal travel policy.⁶ Talk.com shall pay its preferred travel agency directly for all of the travel costs booked through it for the Regulatory Audits. Talk.com shall reimburse the State of Tennessee for any other reasonable out-of-pocket costs incurred by the Regulatory Audit staff including, but not limited to, the per diem rate as allowed by the State of Tennessee. Meal and entertainment expenses in excess of the foregoing per diem shall not be reimbursed. The CSD shall submit to Talk.com a copy of the approved travel reimbursement form being submitted to the State of Tennessee for reimbursement to the Regulatory Audit staff. Talk.com shall reimburse the State of Tennessee within thirty (30) days of receipt of such travel claim.

5. For a period of twenty-four (24) months from the date of approval of this Settlement Agreement, upon written request of the CSD, Talk.com shall arrange for random, unannounced monitoring of Talk.com outbound telemarketing into the state of Tennessee

⁶ A copy of Talk.com's Travel and Expense Policy is attached hereto as Exhibit B.

("Remote Monitoring"). Talk.com and CSD shall work together in good faith to coordinate such Remote Monitoring.

6. Talk.com shall notify, in writing, all of its subscribers in Tennessee who have asserted oral or written complaints to Talk.com or the CSD since March 6, 2001 informing them (1) that the TRA filed the *Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed* on November 8, 2001 and the proceeding has now been resolved by settlement; and (2) of their rights pertaining to phone solicitations under Tenn. Code Ann. § 65-4-401 *et seq.* and billing under Tenn. Code Ann. § 65-4-125, including the procedures established under Tennessee laws and regulations for obtaining relief if their complaint was not resolved. Talk.com shall work with the CSD on the text of the subscriber notification. Within sixty (60) days of approval of the Settlement Agreement, Talk.com shall mail or email such notification to those subscribers.

7. Talk.com shall pay the TRA three hundred and twenty-five thousand dollars (\$325,000.00) in settlement of all complaints included in this Settlement Agreement over a period of six (6) years. Talk.com shall remit the first payment in the amount of seventy-five thousand (\$75,000.00) to the Office of the Chairman of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement.⁷ Thereafter, Talk.com shall pay to the TRA the sum of twenty nine thousand one hundred and sixty-eight dollars (\$29,168.00) each year for a period of six (6) years in quarterly payments of seven thousand two hundred ninety-two dollars (\$7,292.00) each, which shall be remitted to the TRA no later than the first business day of the first month in each quarter beginning September 1, 2002, for twenty-four (24) consecutive quarters, ending on March 1, 2008. The final payment of

⁷ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville, TN 37243, referencing TRA Docket No. 01-00216.

seventy-four thousand nine hundred and ninety-two (\$74,992.00) shall be made on June 1, 2008.⁸ Upon completion of the payments amounting to three hundred and twenty-five thousand dollars (\$325,000.00) and compliance with the other terms and conditions of this Settlement Agreement, Talk.com shall be excused from further proceedings in this matter.

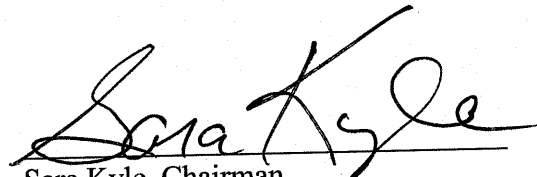
8. In the event that the CSD receives additional complaints and the Directors of the TRA make a finding after an evidentiary hearing that Talk.com has followed a pattern of continued violation of Tenn. Code Ann. § 65-4-125, Tenn. Code Ann. § 65-4-405(f) or Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.07(1) relating to any causes of action arising after the date of approval of this Settlement Agreement, the Directors of the TRA may reevaluate the payment terms set forth herein, and require a reasonable acceleration of any amounts owing as of the date of such reevaluation.

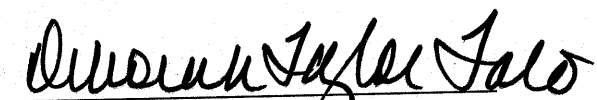
9. In the event that Talk.com merges or consolidates with or transfers its assets to another firm, corporation or entity, Talk.com or its successor shall remain responsible for fully complying with the terms and conditions of the Settlement Agreement. Talk.com shall so notify the CSD no later than ten (10) days prior to the completion of the transaction.

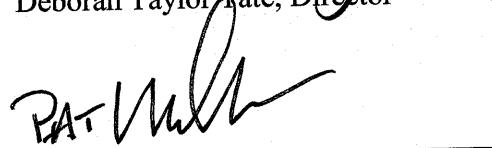
10. Talk.com agrees to comply with all provisions of the Tennessee cramming and slamming laws, the Do-Not-Call Telephone Sales Solicitation law and their concomitant regulations.

⁸ A schedule showing the dates and amounts of payment is attached to Exhibit A.

11. In the event that Talk.com fails to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket. Talk.com shall pay any and all costs incurred in enforcing the Settlement Agreement.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

**SHOW CAUSE PROCEEDING
AGAINST TALK.COM, INC.**

**DOCKET NO.
01-00216**

SETTLEMENT AGREEMENT

This Settlement Agreement, which has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and **Talk.com Holding Corp. a/k/a/ Talk.com, Inc.** ("Talk.com" or the "Company"), a Pennsylvania corporation which has changed its corporate name to Talk America Inc., resolves the issues alleged in the *Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed* (hereinafter "*Show Cause Order*") entered on November 8, 2001. This Settlement Agreement pertains to any causes of action arising up to and including the date of approval of this Settlement which allege that Talk.com violated the slamming or cramming provisions of TENN. CODE ANN. § 65-4-125(a) and (b) or the Tennessee Do-Not-Call Telephone Sales Solicitation law, TENN. CODE ANN. § 65-4-401, *et seq.*, and their concomitant regulations, TENN. COMP. R. & REGS. 1220-4-2-.56, 1220-4-2-.58 and 1220-4-11.07 ("Settled Complaints"). This Settlement Agreement is subject to the approval of the Directors of the TRA. Upon approval by the Directors of the TRA, and upon full payment of the Settlement Amount in accordance with Section 3(f) hereof and compliance with the terms of this Settlement Agreement, this Settlement Agreement shall

EXHIBIT

A

be deemed a full settlement, release, accord and satisfaction of all liability for the Settled Complaints.

TENN. CODE ANN. § 65-4-125(a), Tennessee's "slamming" law, prohibits telephone service providers and persons acting on their behalf from designating or changing a subscriber's telecommunications services provider if those designating or changing the service "know[] or reasonably should know that such provider or person does not have the authorization of such subscriber." TENN. COMP. R. & REGS. 1220-4-2-.56 delineates the authorized procedures necessary to lawfully switch telephone service providers.

TENN. CODE ANN. § 65-4-125(b), Tennessee's "cramming" law, prohibits telephone service providers and persons acting on their behalf from billing and collecting from any subscriber to telecommunications services "any charges for services to which the provider or person acting on behalf of the provider . . . [know] or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services." TENN. COMP. R. & REGS. 1220-4-2-.58 sets forth the billing requirements for charges on consumers' bills.

TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1) prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. TENN. CODE ANN. § 65-4-405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

The CSD commenced its investigation of Talk.com on March 1, 2000, after receiving a complaint regarding a billing dispute with Talk.com. The CSD provided Talk.com with a Notice of the Violation on March 1, 2000.

As the CSD's investigation proceeded, additional consumer complaints alleging violations of the slamming, cramming and Do-Not-Call statutes were filed against Talk.com or its affiliated companies.¹ In each instance, the CSD notified Talk.com of the complaint and requested a response. The CSD met with representatives of Talk.com in February of 2001 to discuss collectively the consumer complaints on file at the TRA.

On March 6, 2001, the Directors voted unanimously to open Docket No. 01-00216 "for the purpose of further investigation and the initiation of show cause proceedings against Talk.com, Inc. for failure to comply with TENN. CODE ANN. §§ 65-4-125, 65-4-404 and TENN. COMP. R. & REGS. 1220-4-2-.56 and 1220-4-11-.07." On October 12, 2001, the TRA issued the *Order Expanding Show Cause Proceeding to Include the Investigation of "Cramming" Complaints Pursuant to Tenn. Code Ann. § 65-4-125(b) Against Talk.com*. On November 8, 2001, the TRA issued the *Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed* (hereinafter "*Show Cause Order*"), which included one hundred and seven (107) complaints from Tennessee consumers.

TENN. CODE ANN. § 65-4-125(f) authorizes the TRA to impose a civil penalty of "not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000)" for each day of violation upon telecommunications service providers that have

¹ Talk.com is affiliated with or also known as Access One, Access One Communications, Omni-call, The Phone Company, The Other Phone Company, Talk America Inc. and Tel-save. The TRA approved a settlement agreement between the CSD and Access One at a regularly scheduled Authority Conference held on August 15, 2000. Access One merged with an affiliate of Talk.com on August 9, 2000.

violated the slamming and cramming provisions of TENN. CODE ANN. § 65-4-125. TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violations. Talk.com's headquarters are located in Reston, Virginia, with offices in New Hope, Pennsylvania, Palm Harbor, Florida, Orlando, Florida, Fort Myers, Florida and Greenville, South Carolina. The company employs approximately eleven hundred persons, with no more than one (1) person working within the state of Tennessee.

Among the factors the CSD considered in reaching this Settlement Agreement is Talk.com's current financial status. Financial filings issued by Talk. America Holdings Inc., the parent company of Talk.com Inc., state that the Talk America Holdings Inc. "incurred net losses of \$224.7 million and \$61.9 million in 2001 and 2000 respectively."² In addition, the parent company has an accumulated deficit of \$425.9 million and negative stockholders' equity of \$74.4 million. Because of trading levels of the parent company's stock and the financial position, the parent's listing on the NASDAQ market is jeopardized.

During the investigation of the complaints, Talk.com registered with the TRA as a telephone solicitor on October 6, 2000. Since Talk.com registered in the Do-Not-Call program, the CSD has received only two (2) complaints alleging that Talk.com violated

TENN. CODE ANN. § 65-4-401, *et seq.* These complaints alleged causes of action that arose in January and February of 2001.

During the investigation of these complaints, Talk.com met with members of the CSD on several occasions. In recent months, Talk.com has made significant efforts to come into compliance with Tennessee law and provide appropriate relief to complainants.

Talk.com voluntarily provided the CSD with copies of its solicitation and verification scripts and ceased the use of scripts the CSD deemed non-compliant with Tennessee law and regulations. Talk.com has paid a total of ninety-one thousand seven hundred and thirty-seven dollars (\$91,737.00) in monetary adjustments and restitution to Tennessee consumers who filed complaints with the TRA, some of whose complaints are included in the *Show Cause Order*. Talk.com has resolved the one hundred and seven (107) complaints specifically cited in the *Show Cause Order*.³ Talk.com has paid a total of twelve thousand five hundred and seventy-two dollars (\$12,572.00) in monetary adjustments and restitution to the sixty-one (61) complainants in the *Show Cause Order* who alleged slamming and cramming violations.⁴ Since the *Show Cause Order* was issued, the CSD has received only one complaint against Talk.com in which the alleged cause of action arose after the November 8, 2001 filing date.⁵ Talk.com has resolved this complaint to the consumer's satisfaction. The allegation involved an

² Talk America Holdings, Inc. Offering Circular and Consent Solicitation Statement (February 21, 2002).

³ A review of the consumer files of these complainants indicates that all disputes have been resolved either through payments or by other arrangements. As part of Talk.com's obligation under this Settlement, as set forth in Section 3(e), Talk.com will contact not only every person whose complaint was included in the *Show Cause Order* but every person who has filed a complaint in Tennessee alleging violations of the slamming, cramming and Do Not Call statutes and regulations since March 6, 2001 thereby assuring that all of such complainants receive full and complete resolution of their complaints.

⁴ Individuals alleging violations of the Do-Not-Call law would not have incurred actual damages from said violation.

⁵ This complaint, which was filed on February 26, 2002, alleges violations of Tenn. Code Ann. § 65-4-125(b).

unauthorized switch of telecommunications provider through the use of a promotional check. As is provided below, Talk.com has agreed to cease the use of promotional checks for a period of one (1) year from the date of approval of this Settlement Agreement.

In an effort to resolve all complaints filed against Talk.com since March 1, 2000, CSD and Talk.com agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Talk.com admits that the one hundred and seven (107) complaints included in the *Show Cause Order* demonstrate that it acted in violation of TENN. CODE ANN. §65-4-125(a) and (b) and TENN. CODE ANN. § 65-4-404 and their concomitant regulations.
2. Since the TRA filed the *Show Cause Order*, Talk.com has made significant efforts to come into compliance with TENN. CODE ANN. § 65-4-125(a) and (b), TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1). During the investigation Talk.com contacted the CSD and expressed an interest in resolving this matter. Talk.com appears to have resolved the consumer complaints included in the *Show Cause Order*. Talk.com ceased use of solicitation and verification scripts the CSD deemed noncompliant with state regulations. Talk.com registered with the TRA as a telephone solicitor on October 6, 2000 and receives a monthly copy of the Do-Not-Call Register.
3. The CSD will monitor Talk.com's actions in Tennessee. Talk.com and the CSD agree to the following conditions to assist the CSD in its monitoring activities:

a. Talk.com shall cease the use of promotional checks in its solicitation of Tennessee subscribers for a period of one (1) year from the date of the approval of this Settlement Agreement.

b. For a period of twenty-four (24) months following the date of approval of this Settlement Agreement, Talk.com shall submit to the CSD a monthly report setting forth a written summary of all oral and written complaints received by Talk.com's Regulatory, ILEC Complaint and Executive Departments (including, without limitation, complaints received via email, facsimile and telephone) from Tennessee customers alleging billing irregularities or that their telecommunication service provider was switched without authorization. Each written summary shall include the following to the full extent available:

- (1) the name and telephone number of the customer;
- (2) the nature of the complaint;
- (3) the date the complaint arose;
- (4) the name of the sales representative or other Talk.com employee responsible for or involved in the generation of the complaint;
- (5) a description of the action taken by Talk.com to resolve the complaint;
- (6) a description of the action taken by Talk.com with respect to the sales representative or Talk.com employee involved in the complaint (including, where applicable, copies of reprimands and termination letters); and

(7) a summary of the refunds, if any, provided to the customer.

Talk.com shall attach to each report copies of all written complaints raising slamming or cramming issues received by Talk.com from Tennessee customers and all slamming and cramming complaints of Tennessee customers received by Talk.com from any regulatory body or consumer protection agency (such as the Better Business Bureau, Federal Communications Commission, Tennessee Regulatory Authority, or other governmental regulatory body). Such reports shall be treated as confidential to the extent allowable under Tennessee law.

c. For a period of twenty-four (24) months from the date of approval of this Settlement Agreement, Talk.com shall arrange, at its own expense, for two (2) representatives of the CSD to visit the Talk.com office where its telemarketing activities are being conducted for a semi-annual regulatory audit of Talk.com's processes (the "Regulatory Audit"). Such Regulatory Audits shall be conducted no more than twice during any calendar year over a period not to exceed three (3) consecutive days unless as a result of such Regulatory Audit the CSD determines that Talk.com has demonstrated noncompliance with TENN. CODE ANN § 65-4-125, TENN. CODE ANN. § 65-4-401, *et seq.* or their concomitant regulations. In the case of such failure, the CSD shall notify Talk.com in writing within forty-eight (48) hours of completion of the previous Regulatory Audit of an additional Regulatory Audit and an additional Regulatory Audit shall be scheduled at the parties' mutual convenience within the following ninety (90) days. During the Regulatory Audit and additional Regulatory Audit, if any, the CSD representatives may, at their discretion, interview Talk.com customer service and

regulatory representatives, review training and disciplinary measures, and such other matters as may be necessary to monitor Talk.com's solicitation and billing activities in Tennessee. The CSD shall use its best efforts to conduct its Regulatory Audit in a manner that is not disruptive to Talk.com's operations. The CSD acknowledges and agrees to book all travel through Talk.com's preferred travel agency, and to adhere to Talk.com's internal travel policy (attached hereto). Talk.com agrees to pay Talk.com's preferred travel agency directly for all of the travel costs booked through it for the Regulatory Audits. However, Talk.com agrees to reimburse the State of Tennessee for any other reasonable out-of-pocket costs incurred by the Regulatory Audit staff including, but not limited to, the per diem rate as allowed by the State of Tennessee.⁶ The 2002 rate for the Orlando, Florida, area is forty-two (\$42) per day with 75% of the per diem amount being allowed for the date of arrival and the date of departure. Meal and entertainment expenses in excess of the foregoing per diem shall not be reimbursed. CSD agrees to submit to Talk.com a copy of the approved travel reimbursement form being submitted to the State of Tennessee for reimbursement to the Regulatory Audit staff. Talk.com agrees to reimburse the State of Tennessee within thirty (30) days of receipt of such travel claim.

d. For a period of twenty-four (24) months from the date of approval of this Settlement Agreement, upon written request of the CSD, Talk.com shall arrange for random, unannounced monitoring of Talk.com outbound telemarketing into

⁶ These per diem rates are currently based on the U.S. General Services Administration CONUS (Continental United States) rates provided by the federal government.

the state of Tennessee ("Remote Monitoring"). Talk.com and CSD shall work together in good faith to coordinate such Remote Monitoring.

e. Talk.com shall notify, in writing, all of its subscribers in Tennessee who have asserted oral or written complaints to Talk.com or the CSD since March 6, 2001 informing them (1) that the TRA filed the *Order Requiring Talk.com to Appear and Show Cause Why a Cease and Desist Order and/or Fine Should Not Be Imposed* on November 8, 2001 and the proceeding has now been resolved by settlement; and (2) of their rights pertaining to phone solicitations under Tenn. Code Ann. § 65-4-401 *et seq.* and billing under TENN. CODE ANN. § 65-4-125, including the procedures established under Tennessee laws and regulations for obtaining relief if their complaint was not resolved. Talk.com agrees to work with the CSD on the text of the subscriber notification. Within sixty (60) days of approval of the Settlement Agreement, Talk.com will mail or email such notification to those subscribers.

f. Talk.com agrees to pay the TRA three hundred and twenty-five thousand dollars (\$325,000.00) (the "Settlement Payment") over a period of six (6) years in settlement of all complaints included in this Settlement Agreement. Talk.com shall remit the first payment in the amount of seventy-five thousand dollars (\$75,000) to the Office of the Executive Secretary of the TRA no later than thirty (30) days from the date the Directors of the TRA approve this Settlement Agreement.⁷ Thereafter, Talk.com shall pay to the TRA the sum of twenty nine thousand one hundred and sixty-eight dollars (\$29,168) each year for a period of

⁷ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville, TN 37243, referencing TRA Docket No. 01-00216.

six (6) years in quarterly payments of seven thousand two hundred ninety-two dollars (\$7,292) each, which shall be remitted to the TRA no later than the first business day of the first month in each quarter beginning September 1, 2002, for twenty-four (24) consecutive quarters, ending on March 1, 2008. The final payment of seventy-four thousand nine hundred and ninety-two (\$74,992.00) shall be made on June 1, 2008.⁸ Upon completing of the payments amounting to three hundred and twenty-five thousand dollars (\$325,000.00) and compliance with the other terms and conditions of this Settlement Agreement, Talk.com shall be excused from further proceedings in this matter.

g. In the event that the CSD receives additional complaints and the Directors of the TRA make a finding after an evidentiary hearing that Talk.com has followed a pattern of continued violation of TENN. CODE ANN. § 65-4-125, TENN. CODE ANN. § 65-4-405(f) or TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1) relating to any causes of action arising after the date of approval of this Settlement, the Directors of the TRA may reevaluate the payment terms set forth in Section 3(f) hereof, and require a reasonable acceleration of any amounts owing as of the date of such reevaluation.

4. In the event that Talk.com merges or consolidates with or transfers its assets to another firm, corporation or entity, Talk.com or its successor shall remain responsible for fully complying with the terms and conditions of the Settlement Agreement. Talk.com shall so notify the CSD no later than ten (10) days prior to the completion of such transaction.

⁸ A schedule showing the dates and amounts of payment is attached hereto.

5. Talk.com agrees to comply with all provisions of the Tennessee cramming and slamming laws, the Do-Not-Call Telephone Sales Solicitation law and their concomitant regulations.
6. Talk.com agrees that a company representative will attend the Authority Conference during which the Directors consider this Settlement Agreement.
7. In the event that Talk.com fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Talk.com shall pay any and all costs incurred in successfully enforcing this Settlement Agreement.

Eddie Roberson

Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

6-3-02

Date

Aloysius T. Lamm, IV

Signature

Aloysius T. Lamm, IV

Print Name

Executive Vice President, General
Print Title Counsel & Secretary
Talk America Inc.

5/31/02

Date

Talk America Tennessee Settlement Payment Schedule

July 2002 - June 2008

Up front payment	7/1/02	\$ 75,000
Quarterly payments		\$ 175,000
Balloon Payment	7/1/08	\$ 75,000
		<u>\$ 325,000</u>
Term of Payments (months)		72

2002		<u>Jul-02</u>	<u>Sep-02</u>	<u>Dec-02</u>	
	One-time Payments	\$75,000			
	Quarterly Payments	*	7,292	7,292	
2003		<u>Mar-03</u>	<u>Jun-03</u>	<u>Sep-03</u>	<u>Dec-03</u>
	One-time Payments				
	Quarterly Payments	7,292	7,292	7,292	7,292
2004		<u>Mar-04</u>	<u>Jun-04</u>	<u>Sep-04</u>	<u>Dec-04</u>
	One-time Payments				
	Quarterly Payments	7,292	7,292	7,292	7,292
2005		<u>Mar-05</u>	<u>Jun-05</u>	<u>Sep-05</u>	<u>Dec-05</u>
	One-time Payments				
	Quarterly Payments	7,292	7,292	7,292	7,292
2006		<u>Mar-06</u>	<u>Jun-06</u>	<u>Sep-06</u>	<u>Dec-06</u>
	One-time Payments				
	Quarterly Payments	7,292	7,292	7,292	7,292
2007		<u>Mar-07</u>	<u>Jun-07</u>	<u>Sep-07</u>	<u>Dec-07</u>
	One-time Payments				
	Quarterly Payments	7,292	7,292	7,292	7,292
2008		<u>Mar-08</u>	<u>Jun-08</u>		
	One-time Payments		\$74,992		
	Quarterly Payments	7,292	7,292		

TALK AMERICA

TRAVEL & EXPENSE POLICY

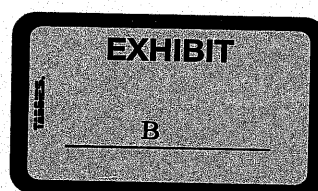


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INTRODUCTION

This travel and expense policy is the only approved source of information relating to Travel policy, rates and reimbursements. It is intended for all Talk America employees and consultants.

Employees will only be reimbursed for expenses incurred which are necessary to transact company business and which are incurred in connection with the employees' regular duties.

All employees who incur travel and expense costs are responsible for familiarizing themselves with this policy and adhering to it. Each employee's immediate supervisor is responsible for ensuring that all employees who travel or incur business related expenses comply with this policy.

As explained in this policy, managers must review and approve travel in advance to ensure that planned trips justify the associated costs. Managers must also approve expense reports subsequent to the travel to ensure that all expenses comply with the policy.

GENERAL REGULATIONS

Expenses submitted which do not comply with Talk America's Travel and Expense Policy will become the spending employee's responsibility and the employee will not be reimbursed for them.

As business requirements dictate, the Chairman and his direct reports are allowed to make changes to this policy as necessary.

Exceptions to this policy for any other Talk America employee or consultant can only be approved by the Vice President of Finance or the President.

All travel and expense costs incurred must be submitted within 5 days of being incurred (or end of a business trip) and all reimbursements will be processed within five business days of being received.

AIR TRAVEL ARRANGEMENTS

All travel arrangements must be made through the Company's designated travel agencies. They are:

Five Star Travel
7019 Silverwood Drive
New Port Ritchie, FL
Telephone: 727-817-1787
Toll Free: 866-817-1787
Fax: 727-817-1767
E-Mail: FiveStarTRVL@AOL.com

OR

Horizon Travel Limited
4 Market Square
New Hope, PA 18938
Telephone: 215-862-3373
Fax: 215-862-3684
E-Mail: HorTravel@AOL.com

Employees not utilizing the Company's designated travel agency for all hotels, air and car reservations will not be reimbursed.

Employees traveling are required to obtain pre-travel trip authorization from their immediate supervisor before making travel arrangements.

AIR TRAVEL:

Employees are required to fly economy class and are expected to take the least priced available fare. First class airfare will not be reimbursed. Private planes are not to be used.

These guidelines have been communicated to our agency and tickets issued will be in accordance with these guidelines.

It is often more economical to use alternate airports, BWI rather than Reagan National or Dulles, Midway rather than O'Hare. Alternate airports are to be used when there is a significant savings and the needs of the business can be met even if additional travel time is required.

The agency will offer connecting flights as part of Talk America's least fare policy if the connecting flight falls within a 90 minutes lapsed timeframe.

Employees may not make flight selections based on personal preference, airline, type of aircraft, seat selection, frequent flyer program, etc.

Often times internet based fares are available that are cheaper than the agency's cheapest fare. Travelers may make internet reservations if fares are cheaper than the quoted agency fares and in keeping with Talk America's Travel Policy. However, airline reservations made by our designated agencies are the preferred method of making reservations.

To maximize savings, travelers are encouraged to schedule travel as far in advance as possible. At least two weeks is recommended.

The agency will advise you of penalties and non-refunded costs associated with advanced booking or restricted fares. Each traveler should assess the cost of change to travel plans when booking flights and should seek guidance from their manager when in doubt. En route changes to your travel plans should be made through the agency.

Each traveler is responsible for canceling confirmed reservations promptly with agency as soon as it is clear that a trip will not be made as scheduled.

The future use of a not-used non-refundable ticket is the responsibility of the traveler and the traveler must coordinate this with the agency. The traveler must also document on their expense report re-issue or exchange fees. Refunds for unused refundable tickets will be processed by the agency.

Frequent Flyer Program:

Travelers may retain Frequent Flyer benefits, however, employees will not be reimbursed for any free tickets received from air mileage programs and such programs will not be considered as part of Talk America's least fare program. Talk American does not reimburse travelers for the cost of memberships to an airline club.

LODGING

HOTEL SELECTION:

All hotel reservations should be made through our travel agency. The Company has negotiated preferred rates with hotels in Orlando, Fort Lauderdale, Palm Harbor, Greenville, SC, New Hope, PA and Reston, VA. Information regarding these hotels, address, fax and telephone numbers are located under preferred lodging on the Talk America Intranet site. Travelers may contact the hotels directly to make reservations if they wish. However, direct invoices from the hotels are not permitted.

In instances where our negotiated rates are not available, our agency will recommend good quality, moderately priced hotels. In cities where negotiated rates are available and the travelers chooses to stay elsewhere, resulting in a higher rate per day, reimbursement will be limited to the negotiated rate.

CANCELLATIONS

Hotel reservations can be guaranteed for late arrival. However, it is the traveler's responsibility to cancel reservations that cannot be kept. Time permitting; the traveler can contact the agency to cancel the reservations.

No-show hotel bills require the approval of the Vice President of Finance for payment.

The following is a list of hotel items which are non-reimbursable.

- - Health club, athletic fees or golf or tennis fees.
- - Bar or lounge charges.
- - In-room movies.
- - Personal items purchased for travel.
- - Shoeshine
- - Barber/hairdresser/spas

TRANSPORTATION

OVERVIEW:

Employees are required to use the most economical mode of transportation possible when traveling on company business.

Courtesy Cars:

When traveling to airport from hotels that provide courtesy cars or vans, employees are expected to take advantage of this no-cost service.

Airport Limos & Buses:

In major cities and major airports, airport buses and limos are provided. Often times, these methods of transportation are cheaper and quicker than private taxis. Receipts are required for reimbursement.

Taxi:

When taxis are the most economical mode of transportation, receipts are required for reimbursement.

Rental Cars:

Car rentals are to be booked through the company travel agency. All rentals will be made through the Company's preferred vendors and personal preferences are not a selection factor. Mid-size cars should be rented unless the number of travelers justifies for a larger vehicle. Premium or luxury cars should not be rented.

Employees should decline all insurance coverage. Also, employees should not choose the prepaid fuel option. Travelers are expected to return cars to the rental agency with a full tank of gas. When traveling together, employees are expected to share rental cars whenever practical.

Employees should review the rental invoice at the time the auto is returned to ensure it is correct. The employee should resolve all disputes at the rental counter before the car is returned.

In the event of an accident in a rental car, the employee should make a complete accident report and notify the Vice President of Finance on the next business day.

In the event that an accident occurs when an employee is using a company rental car for personal use, the employee's personal insurance should

provide the necessary coverage. The company's insurance coverage does not provide insurance when cars are used for personal business.

OTHER TRANSPORTATION METHODS

PERSONAL CARS:

Employees may utilize personal cars for business travel when it is practical. The total reimbursement for the use of a personal car is limited to the cost of economy airfare for the same destination. Personal cars used for business will be reimbursed at the rate of \$.32/mile. Employees will not be reimbursed for rental cars in their home cities. The mileage allowance provided by Talk America covers all auto costs, insurance, gasoline, repairs, etc. Employees who are provided a car allowance may not submit expense reports for mileage reimbursement.

PARKING AND TOLLS:

Talk America will reimburse employees who park their personal cars at the airport while on business trips. Employees may not use valet parking. Valet parking will not be reimbursed. Daily, weekly or economy parking should be chosen by the traveler depending on circumstances and length of planned trip. Parking expenses while on other company business will also be reimbursed. Receipts must be provided.

Tolls are reimbursable other than tolls to and from work.

REQUIRED INSURANCE COVERAGE:

Each employee using a personal automobile on Company business must have current and valid automobile insurance providing limits that will adequately protect the employee's personal assets. The Company is not responsible for meeting any deductible amounts or claims above limits of coverage for personal assets. Proper insurance planning is the responsibility of every individual. The employee must carry a minimum of \$100,000 per person, \$300,000 per occurrence of bodily injury liability and \$50,000 in property damage liability. The employee must also have a valid driver's license. Physical damage (comprehensive and collision) insurance is not provided by the Company; any physical damage to a personal automobile used for Company business or premium for obtaining such coverage is not reimbursable.

MEALS AND ENTERTAINMENT

Personal Meals While Traveling:

The maximum daily meal expense, including tips, is \$35.00 per day.

Business Meals:

Business meals, those taken with business associates during which a business discussion takes place, will be reimbursed based on a reasonableness standard. Such meals must be associated with the conduct of business and extravagant expenses will not be reimbursed.

Alcohol:

Alcohol served with business meals, as described above, will also be paid based on a rule of reasonableness.

Alcohol served with dinner as part of personal meals while traveling will be reimbursed subject to the daily meal maximum described above. All other expenses for alcohol are non-reimbursable.

Entertainment Expenses:

Entertainment expenses, including activities such as theater and sporting events, when a business discussion takes place before, after or during will be reimbursed based on a rule of reasonableness. Such tickets must be used by both the employee and the customer.

Employees Dining Together:

When more than one employee attends a business meal or a personal meal when traveling, the senior employee present will pay the bill. These expenses are limited to the rules and maximums described above.

PAYMENT METHODS

The American Express Corporate Travel Card is the recommended payment method for travel expenses. Individuals who so choose may use any other credit card.

Credit cards, either corporate or personal, should be used for all travel related expenses, including air, lodging, meals and car rental.

Employees may obtain a corporate credit card application by contacting the Talk America Purchasing Department. Managers' approval is required to obtain a corporate credit card. If issued, corporate credit cards are for business related expenses only. No personal charges are allowed.

The Talk America employee issued an American Express Corporate Card is personally responsible to make full payment to American Express upon receipt of the invoice.

Talk America will reimburse each employee for expenses incurred within the definitions of this policy but Talk American is not responsible for any charges made to the employee's credit card. American Express Membership Awards are not associated with the Talk America American Express Corporate Card. Corporate cards obviate the need for Talk America to provide cash advances to employees for travel purposes. Corporate card delinquencies will be reported to the Vice President of Finance monthly.

Reimbursement:

Reimbursement of business related expenses will be paid to employees within five business days.

Each cardholder is responsible for resolving disputes and discrepancies on their card.

Upon separation from the Talk America, Corporate American Express cards should be turned in to Talk America.

EXPENSE REPORT PROCESSING

All expenses for reimbursement must be submitted using the Talk American Expense Reimbursement form, a copy of which can be downloaded from the Talk American Intranet site.

Travel and Expense Reimbursement forms should be submitted within in five days after the end of a business trip.

All Travel & Expense Reimbursement requests must be accompanied by receipts and documentation. Original receipts should be submitted. Receipts should be taped to an 8 ½ x 11" sheet of plain paper and clearly marked. Initial approval of each travel expense report should be obtained from their manager before it is submitted to the Accounts Payable Department for final approval and payment. Employee Expense Reports with required documentation and receipts should be sent to: Debbie Bratzler, 6805 Route 202, New Hope, PA 18938 for payment.

Receipt Limit:

Receipts are not required for non-meal charges under \$10.00. However, travelers are encouraged to submit receipts whenever possible to support expenses incurred.

Receipts for meal expenditures above \$10.00 are required. Credit card receipts are preferred. Cash register receipts are acceptable. Tear-off or filo receipts are not acceptable.

For business meals, the following information should be provided:

- - Name, title and company of all attendees.
- - Name and location of restaurant.
- - Amount of expense.
- - Specific business topic discussed.